

LAW REVIEW¹ 26069

October 2026

Military Absentee Voting—What about State Elections?

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

7.1—States must transmit absentee ballots in time.

10.2—Other Supreme Court decisions.

Q: I am a petty officer on active duty in the United States Navy. I have read with great interest your Law Review 26006 (February 2026). Like the sailor who asked the questions in that article, I have a parent who is running for office in the 2026 general election. In my case, my father is a general election candidates for the House of

¹ I invite the reader's attention to [Law Center | ROA](#). You will find more than 2,300 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

Representatives of our state. I will vote for him, and I certainly hope that my ballot will be counted.

I am currently serving on a U.S. Navy destroyer in the Indian Ocean. Our mail service at sea is unavoidably slow and intermittent. We do not have the opportunity to send and receive mail every day. Every several days, when our ship meets with an oiler or a replenishment ship, we receive a bag of mail for members of the crew, me included, and we have the opportunity to transmit mail to our friends and family back home.

I followed your advice, the advice that you gave in Law Review 26006. I utilized the system operated by the United States Vote Foundation to apply for my absentee ballot for the 2026 primary and general election. I received my ballot well in advance of the primary. I marked and returned my primary ballot as soon as I received it. I am confident that my primary ballot was received on time and counted.

But at the time of the primary our ship was tied up at the dock in our homeport. Now, and probably through the November general election, we are in the Indian Ocean. I am concerned about receiving my general election ballot in time to cast it and have it counted.

In your Law Review 26006, you discussed a federal law called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). How does that law apply to voting in elections for state officials?

A: UOCAVA gives certain categories of U.S. citizens the right to vote by absentee ballot, and to register to vote by absentee process, in

primary, general, special, and runoff elections for federal offices.³ Federal offices include President and Vice President, United States Senator, United States Representative, and Delegate or Resident Commissioner to Congress.⁴ An “absent uniformed services voter” is eligible to vote under UOCAVA in primary, general, special, or runoff elections for federal office. The term “absent uniformed services voter” is defined by UOCAVA as follows:

(1) “absent uniformed services voter” means—

(A)

a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B)

A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C)

a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.⁵

The “uniformed services” are the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, as well as the commissioned corps of the National Oceanic & Atmospheric

³ 52 U.S.C. § 20302(a)(1).

⁴ 52 U.S.C. § 20310(3).

⁵ 52 U.S.C. § 20310(1). The active-duty service member, or the spouse or dependent of the active-duty service member, can be within or outside the United States.

Administration (NOAA) and the commissioned corps of the Public Health Service.⁶

Under UOCAVA, active-duty service members and their spouses and dependents do not have the right to vote for non-federal offices, but that right is protected by the Servicemembers Civil Relief Act (SCRA). The pertinent SCRA subsection is as follows:

For the purposes of voting for any Federal office (as defined in section 30101 of title 5) **or a State or local office**⁷, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1)

be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2)

be deemed to have acquired a residence or domicile in any other State; or

(3)

be deemed to have become a resident in or a resident of any other State.

Section 4025(a) addresses the question of domicile. This section does not explicitly grant service members and their spouses and dependents the right to vote in nonfederal elections. I have proposed that Congress amend UOCAVA and grant these people the explicit right to vote in nonfederal as well as federal elections.

⁶ 10 U.S.C. § 101(a)(5).

⁷ 50 U.S.C. § 4025(a) (emphasis supplied).

Q: Does Congress have the constitutional authority to give service members and their spouses and dependents the explicit right to vote in nonfederal as well as federal elections?

A: Yes. Article I, section 8 of the Constitution provides most of the authority for Congress. Clauses 11-16 are referred to collectively as the “war powers clauses.” Clause 11 provides the authority to declare war. Clause 12 provides for the authority to raise and support armies. Clause 13 provides for Congress to provide and support a Navy. Clause 14 empowers Congress to make rules for the governance of the land and naval forces. Clause 15 empowers Congress to provide for calling out the militia forces of the states (now known as the National Guard). Clause 16 provides for organizing, arming, and disciplining the militia forces.

In 1918, 11 months after our country joined the “Great War” (now known as World War I), Congress enacted the Soldiers’ and Sailors’ Civil Relief Act (SSCRA),⁸ which provided valuable rights for individuals entering military service voluntarily or involuntarily. The original version of the SSCRA only applied during the period of national emergency that had been declared for World War I, and that emergency ended in 1919.

In 1940, after World War II had begun but before our country formally entered the war on 12/7/1941, Congress reenacted the SSCRA.⁹ On 12/19/2003, President George W. Bush signed into law the

⁸ Act of March 18, 1918, Chapter 20, 40 Stat. 440.

⁹ Act of October 17, 1940, Chapter 888, 54 Stat. 1178.

Servicemembers Civil Relief Act (SCRA).¹⁰ This important new law improved upon and renamed the SSCRA.

From the beginning, the SSCRA and the SCRA have protected the service member from double taxation of his or her military income and personal (moveable) property, both by the service member's home (domicile) state and by the state where the service member physically resides only because military duties require the member's presence in that state. The pertinent SCRA section is as follows:

(a)Residence or domicile

(1)In general

A servicemember shall neither lose nor acquire a residence or domicile for purposes of with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2)Spouses

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders.

(3)Election

For any taxable year of the marriage, a servicemember and the spouse of such servicemember may elect to use for purposes of

¹⁰ Public Law 108-189, 117 Stat. 2835. See generally Law Review 116 (March 2004).

taxation, regardless of the date on which the marriage of the servicemember and the spouse occurred, any of the following:

(A)

The residence or domicile of the servicemember.

(B)

The residence or domicile of the spouse.

(C)

The permanent duty station of the servicemember.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Income of a military spouse

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in,

or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2)Exception for property within member’s domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember’s or the spouse’s domicile or residence.

(3)Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4)Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e)Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f)Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g)Definitions

For purposes of this section:

(1)Personal property

The term “personal property” means intangible and tangible property (including motor vehicles).

(2)Taxation

The term “taxation” includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember’s State of domicile or residence.

(3)Tax jurisdiction

The term “tax jurisdiction” means a State or a political subdivision of a State.¹¹

Supreme Court upholds the constitutionality of the SSCRA.

Claiborne Dameron was an Air Force officer on active duty in the late 1940s. Throughout 1948, he was stationed at Lowry Field, near Denver.

¹¹ 50 U.S.C. § 4001 (emphasis supplied).

He lived in an off-base apartment in Denver and commuted to the base. His household goods (furniture, etc.) were valued at \$460. The city of Denver imposed a personal property tax of \$23.51 on those goods. Dameron paid the tax under protest and then sued for a refund in Colorado state court. The state trial court ruled in his favor, but Denver appealed and the Colorado Supreme Court reversed. *Cass v. Dameron*, 125 Colo. 477, 244 P.2d 1082 (1952). Although the amount of money involved (\$23.51) was trivial, even in 1948 dollars, the U.S. Supreme Court granted certiorari.

At the time, the SSCRA provided that a member of the Armed Forces on active duty shall not be considered to be a resident or domiciliary of a place where he or she physically resided pursuant to military orders, and that the servicemember is protected from having to pay state income tax on his or her military salary to the state where he or she physically resides but is not domiciled. The SSCRA provision also provided that the personal (moveable) property of such a servicemember shall not be considered to have a situs in the state where the member physically resides but is not domiciled.

Mr. Dameron was a domiciliary (legal resident) of the Parish of West Baton Rouge, Louisiana, the place where he had lived before he entered active duty. He found it necessary to rent an apartment in the Denver area only because the Air Force had assigned him to duty at Lowry Field. He voted by absentee ballot in Louisiana. He did not vote or register to vote in Colorado and did not consider Colorado to be his residence.

Denver claimed first that the SSCRA provision did not preclude it from imposing its personal property tax on Mr. Dameron's household goods.

The city also argued that the SSCRA was unconstitutional as far as it forbade Denver to tax these household goods. The U.S. Supreme Court forcefully rejected both contentions.

Denver asserted that the SSCRA provision was enacted to protect the service member from double taxation, by the member's home state as well as the state where he was stationed. Denver pointed out that the State of Louisiana and its political subdivisions had not sought to tax Mr. Dameron's household goods. Denver claimed that the SSCRA provision did not apply as it was not necessary in that instance to protect Mr. Dameron from double taxation.

The Supreme Court held that the SSCRA provision was both broad and clear. It provided that the service member's personal property was not considered to have a situs in the state where the member physically resided solely due to military orders. Only the member's home state (Louisiana in this instance) was permitted to tax the member's personal property. The fact that the home state had chosen not to tax the property in question did not authorize (according to the Supreme Court) the physical-presence state and locality to tax that property.

Turning to the constitutional argument, the court held:

The constitutionality of federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service, cannot be doubted. Generally similar relief has been accorded to other types of federal operations or functions. And we [the Supreme Court] have upheld the validity of such enactments. ...

Nor do we see any distinction between those cases and this. ... We have, in fact, generally recognized the especial burdens of required service with the armed forces in discussing the compensating benefits Congress provides. ... Petitioner's [Dameron's] duties are directly related to an activity which the Constitution delegated to the National Government [national defense]. ... Since this is so, congressional exercise of a 'necessary and proper' supplementary power such as this statute [the SSCRA] must be upheld.¹²

The SSCRA (now the SCRA) is a necessary and proper way for Congress to protect the rights and interests of service members, whether they have been drafted or whether they have volunteered. In 1973, Congress abolished the draft and established the All-Volunteer Military. The SCRA is one of many important laws that Congress has enacted to encourage qualified young men and women to volunteer for military service. Because the Supreme Court has upheld the constitutionality of this provision about state and local taxation of personal property belonging to service members, I predict that the Supreme Court will also uphold the constitutionality of a federal law that requires the states to give service members and their spouses and dependents a reasonable opportunity to vote in nonfederal as well as federal elections.

Q: What is the constitutional basis for UOCAVA?

A: The Constitution provides:

¹² *Dameron v. Brodhead*, 345 U.S. 322, 324-25 (1953). See also Law Review 09017 (April 2009). Cf. *Torres v. Texas Department of Public Safety*, 597 U.S. 580 (2022).

The Times, Places, and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; **but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.**¹³

Article I, Section 4 does not give Congress the authority to regulate absentee voting for nonfederal elections, but the “war powers clauses” of Article I, Section 8 give Congress this authority, with respect to service members and their spouses and dependents.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about.>

¹³ United States Constitution, Article I, Section 4 (emphasis supplied). Yes, it is capitalized just that way, in the style of the late 18th Century.

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